

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

MIDDLEBURG MANAGEMENT, LLC,
F/K/A OLD DOMINION MANAGEMENT
SERVICES, LLC,

and

CHRISTOPHER C. FINLAY

Plaintiffs,

v.

CHUBB LIMITED, F/K/A ACE LIMITED,

WESTCHESTER FIRE INSURANCE
COMPANY,

and

BEECHER CARLSON INSURANCE
SERVICES, LLC

Defendants.

Case No.: 1:16-cv-01558

(Removed from the Circuit Court of Fairfax
County, Virginia, Case No. CL-16-15060)

State Action Filed: October 31, 2016

NOTICE OF REMOVAL

TO THE CLERK OF THE COURT, AND TO THE PLAINTIFFS AND THEIR
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446,
Defendant Westchester Fire Insurance Company (“Westchester”) gives notice of its removal to
the United States District Court for the Eastern District of Virginia of this action, filed in the
Circuit Court of Fairfax County, Virginia, under the caption *Middleburg Management, LLC, f/k/a
Old Dominion Management Services, LLC, and Christopher C. Finlay v. Chubb Limited, f/k/a*

Ace Limited, Westchester Fire Insurance Company, and Beecher Carlson Insurance Services, LLC, Case No. CL-16-15060. In support of this Notice, Westchester states as follows:

BACKGROUND

1. On October 31, 2016 Plaintiffs Middleburg Management, LLC, f/k/a Old Dominion Management Services, LLC (“Middleburg”), and Christopher C. Finlay (“Finlay,” and, collectively with Middleburg, “Plaintiffs”) filed a Complaint against Chubb Limited, f/k/a Ace Limited (“Chubb”), and Westchester, in the Circuit Court of Fairfax County, Virginia (the “Circuit Court”), Case No. CL-16-15060 (the “Complaint”).

2. Westchester’s registered agent was served with a summons and a copy of the Complaint on November 14, 2016. True and accurate copies of the summons, Complaint and all accompanying papers served on Westchester are attached hereto as Exhibit A.

3. Plaintiffs moved for and were granted leave to amend the Complaint. On December 2, 2016, the court ordered that Plaintiffs’ Amended Complaint against Chubb, Westchester, and Beecher Carlson Insurance Services, LLC (“Beecher Carlson,” and, collectively with Chubb and Westchester, “Defendants”) (the “Amended Complaint”) is timely filed as of December 2, 2016.

4. Westchester’s registered agent was served with copies of the order and Amended Complaint on December 13, 2016. True and accurate copies of the order, Amended Complaint and all accompanying papers served on Westchester are attached hereto as Exhibit B.

5. This action presents a dispute relating to Westchester’s denial of insurance coverage sought by Plaintiffs in connection with a proceeding pending in the Circuit Court of Fairfax County, Virginia (the “Underlying Proceeding”). *See* Am. Compl. ¶¶ 27-33.

6. The Amended Complaint asserts claims for breach of contract, third-party beneficiary breach of contract, declaratory judgment and reformation against Westchester and Chubb, and claims for breach of contract, breach of fiduciary duty, negligence and constructive fraud against Beecher Carlson. *See* Am. Compl. ¶¶ 34-86.

7. Based on the allegations of the Amended Complaint and for the reasons discussed below, Westchester timely removes this action to this Court pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446.

BASIS FOR FEDERAL JURISDICTION

8. 28 U.S.C. § 1441(a) states in relevant part: “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

9. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum or value of \$75,000 and there is complete diversity of citizenship between Plaintiffs and Defendants.

10. The jurisdictional amount in controversy is met on the face of the Amended Complaint, as Plaintiff prays for damages in excess of \$17,000,000. *See* Am. Compl. ¶¶ 40, 50, 56, 59, 64, 71, 77, 86; 28 U.S.C. § 1446(c)(2).

11. Plaintiff Middleburg alleges it is a Virginia limited liability company. *See* Am. Compl. ¶ 1.

12. Upon information and belief, the sole member of Plaintiff Middleburg is RBMM, LLC, a Virginia limited liability company.

13. Upon information and belief, the members of RBMM, LLC are the Chris Finlay Trust and the Rebecca Finlay Trust.

14. Upon information and belief, the Chris Finlay Trust and the Rebecca Finlay Trust are citizens of Virginia and neither is a citizen of Pennsylvania or Georgia.

15. Plaintiff Finlay alleges he resides in Virginia. *See* Am. Compl. ¶ 2. Plaintiffs therefore are citizens of Virginia for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

16. Plaintiff alleges that Westchester is a Georgia corporation. *See* Am. Compl. ¶ 4. Westchester is in fact a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania, and is therefore a citizen of Pennsylvania for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

17. Plaintiff alleges that Chubb is a New Jersey corporation. *See* Am. Compl. ¶ 3. Chubb is a Swiss corporation with its principal place of business in Zurich, Switzerland, and is therefore a citizen of Switzerland for purposes of diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

18. Plaintiff alleges that Beecher Carlson is a Georgia limited liability company. *See* Am. Compl. ¶ 5. Beecher Carlson is California limited liability company with its principal place of business in Georgia.

19. The sole member of Beecher Carlson is Beecher Carlson Holdings, Inc., a Delaware corporation with its principal place of business in Georgia. Beecher Carlson is therefore a citizen of Georgia for purposes of diversity jurisdiction.

20. Complete diversity exists under 28 U.S.C. § 1332(a) between Plaintiffs and Defendants, as no Plaintiff shares citizenship with any Defendant.

VENUE AND PROCEDURAL REQUIREMENTS

21. The Circuit Court is located within the Alexandria Division of this District. Accordingly, venue in this Court is proper under 28 U.S.C. § 1441(a).
22. A copy of this Notice of Removal and the accompanying filings will be served upon counsel for Plaintiffs and filed with the clerk of the Circuit Court, as required by 28 U.S.C. § 1446(d).
23. This Notice of Removal is timely filed under 28 U.S.C. §§ 1446(b) and 1446(c) because Westchester was served with the original Complaint on November 14, 2016, within 30 days from the filing of this Notice of Removal, and this Notice of Removal is being filed less than one year after the filing of the Complaint, October 31, 2016.
24. Upon information and belief, co-defendant Chubb has not been served with a summons and copy of the Complaint. The consent of Chubb to this removal is therefore not required at this time.
25. Upon information and belief, co-defendant Beecher Carlson has not been served with the Amended Complaint.
26. Counsel for co-defendant Beecher Carlson has informed counsel for Westchester that it intends to join in removal within 30 days of the date it first receives the Amended Complaint. 28 U.S.C. § 1446(b)(3).
27. By removing this action to this Court, Westchester does not waive any defenses, objections or motions available to it under state or federal law. Westchester expressly reserves the right to move for dismissal of Plaintiff's claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant Westchester respectfully gives notice of the removal of the action captioned as *Middleburg Management, LLC, f/k/a Old Dominion Management Services, LLC, and Christopher C. Finlay v. Chubb Limited, f/k/a Ace Limited, Westchester Fire Insurance Company, and Beecher Carlson Insurance Services, LLC*, Case No. CL-16-15060, pending in the Circuit Court of Fairfax County, Virginia, to this Court.

Dated: December 14, 2016

/s/

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*Counsel for Westchester Fire Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December 2016, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record. I further certify that on the above date, a copy of the foregoing was sent via first-class mail, postage prepaid, to the following:

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